UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SCANSOFT, INC.	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 04-10353 PBS
	)	
VOICE SIGNAL TECHNOLOGIES, INC.,	)	
LAURENCE S. GILLICK, ROBERT S.	)	
ROTH, JONATHAN P. YAMRON, and	)	
MANFRED G. GRABHERR	)	
	)	
Defendants.	)	
	)	

SCANSOFT, INC.'S MEMORANDUM IN SUPPORT OF
MOTION TO APPOINT NEUTRAL EXPERT

At the *Markman* hearing on June 17, 2005, this Court directed the parties to select a neutral expert to review the parties' speech recognition engine source code and determine whether VST's source code contains ScanSoft's trade secrets which were misappropriated by the defendants. On July 14, 2005, the parties exchanged their list of proposed neutral experts. While ScanSoft's list of potential neutral experts (as seen in Exhibit A) contain the names of individuals suited to assist the Court with its review and understanding of the source code, VST's proposed experts appear far less suited to assist the Court with an understanding of the contents of VST's source code and the modifications made to the code over time. Because source code analysis, in part, is critical to understanding whether the defendants misappropriated ScanSoft's trade secrets, ScanSoft requests that the Court select one of ScanSoft's proposed experts in order to begin the neutral expert procedure.

I.   **VST'S PROPOSED EXPERTS ARE UNLIKELY TO BE SOURCE CODE
        EXPERTS**

As best as ScanSoft can determine from publicly available information, VST's list of neutral experts names individuals who are undoubtedly highly regarded in the field of speech recognition but who fall short of the credentials necessary to examine, use, test, and understand the development of VST's speech recognition engine source code. ScanSoft alleges that beginning in 2000, defendants Gillick, Roth, Yamron and Grabherr used the trade secret and confidential information it learned at ScanSoft's predecessors, Dragon and L&H, to help create VST's products containing speech recognition technology. *See Amended Complaint at xx.* Speech recognition technology is embodied in software source code, written in esoteric programming language. An ability to read, use, and test source code is a critical aspect of the neutral expert's task in order to assist the Court to determine whether VST's source code presently uses or at one time used any of ScanSoft's trade secret, confidential and proprietary algorithms, language modeling, acoustic modeling, and other highly guarded speech recognition techniques.

VST's proposed neutral experts appear to be very senior speech recognition researchers long removed from familiarity with writing, using, testing, and understanding source code for purposes of conducting any forensic evaluation. To the extent that these proposed experts may once have had familiarity years ago with writing or reading source code, it is likely that that familiarity is now obsolete because programming languages have evolved dramatically over the years. Given the Court's desire for a neutral expert who can find his or her way around VST's speech recognition engine source code programs, it is highly doubtful that any of VST's proposed experts can deliver to the Court a report on what evidence VST's source code provides in the way of ScanSoft's trade secrets.

For example, VST proposes Frederick Jelinek as a neutral expert. Dr. Jelinek is a renowned speech recognition scientist who describes his work as "contributions in the field of information theory, statistical methods used in speech recognizers." *See Exhibit B, Tab 1.* It is entirely possible, based upon the publicly available information about Dr. Jelinek, that he has no recent experience reading and interpreting source code. Similarly, Professor Ney's research interests are identified as "statistical modeling and learning, speech recognition, natural language processing and translation and computer vision;" with no apparent focus on computer source code experience. *See Exhibit B, Tab 2.* The same can be said for VST's proposed expert Charles Wayne.[1] For these reasons, the neutral experts proposed by VST appear not well suited for the task outlined by the Court.[2]

II.   SCANSOFT'S LIST OF EXPERTS HAVE TRAINING AND EXPERIENCE IN SPEECH RECOGNITION AND COMPUTER SOURCE CODE

On the other hand, ScanSoft has proposed three researchers in the Spoken Languages Systems Lab at the Massachusetts Institute of Technology. These individuals appear to have the requisite credentials in both speech recognition <u>and</u> in source code implementation. *See Exhibit A.* Each appears to be involved presently in writing code for speech recognition algorithms, acoustic modeling, language modeling and other aspects of speech recognition. For example,

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[1] Mr. Wayne is presently the program manager for DARPA. *See Exhibit B, Tab 3.* VST's Chief Information Officer, Jordan Cohen worked for DARPA before joining Dragon and has regular contact with DARPA staff regarding funding for his research efforts. Any individual on VST's list of proposed neutral experts who has a direct connection to DARPA should be stricken as biased.

[2] VST proposes as a neutral expert Nelson Morgan of the University of California at Berkeley – the very institution from which VST's own expert, Mr. Wooters, hails. *See Exhibit B, Tab 4.* Having the neutral expert and VST's own as colleagues on Berkeley's faculty creates an issue of bias and should be rejected by the Court.

Mr. Hetherington joined the research staff in 1994 after receiving his degrees from MIT's department of Electrical Engineering and Computer Science. His research interests include search techniques, acoustic measurement, and language models in an integrated search. Mr. Hazen also received a degree from MIT in Electrical Engineering and Computer Science and presently works on acoustic modeling, speaker adaptation and phonological modeling. Similarly, before joining MIT in 1999, Mr. Cyphers wrote software commercially and is presently using his software development experiences to work on speech recognition development research and architectural changes speech recognition source code.

ScanSoft's list of proposed MIT researchers have the requisite background in both speech recognition and computer source code in order to serve as a neutral expert charged with assisting the Court in understanding the source code as evidence of misappropriation of ScanSoft's trade secrets.

CONCLUSION

For the foregoing reasons, ScanSoft respectfully requests that this Court select one of the names appearing on ScanSoft's list of proposed neutral experts in order to commence the Court's neutral expert procedure.

Dated: July 18, 2005

SCANSOFT, INC.,
By its attorneys,

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